

Regulation and governance of captives

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Whatever its domicile, a captive is a regulated insurer. It needs a licence, minimum capital, a board, a risk management function, an actuary, an auditor and, in most domiciles, a compliance function. Supervisors apply the principle of proportionality, which the Insurance Core Principles of the International Association of Insurance Supervisors recognise in an application paper on the supervision of captives.¹ The governance of a captive should demonstrate that its decisions are taken in the domicile by persons with the necessary expertise, which also matters for tax purposes, as the previous sections showed. A captive whose board meets only by telephone and approves decisions prepared at the headquarters will struggle to defend its substance before the tax authorities of the parent.

The revised Swiss supervisory law has also brought changes for the recovery and resolution of insurers, discussed in Chapter II of this Part, which in principle apply to captives as well. In practice, the failure of a captive is rare. The parent group usually stands behind its captive, whose claims are owed to companies of the same group, so that an insolvency would harm mainly the fronting insurer and the group itself.² Captives that insure third-party risks, such as warranties sold to customers or the benefits of employees, raise questions of policyholder protection and are supervised more closely.

A special use of captives concerns employee benefits. Some groups reinsure the risk benefits of their employees, such as death and disability cover provided by local insurers, in their captives. Swiss pension funds can reinsure their risks with an insurer licensed in Switzerland, which may in principle include a captive, although the occupational pension rules and the supervision of pension funds impose conditions that Chapter IV of this Part has outlined.³ In the European Union, the use of captives for employee benefits has been examined by the supervisors under the IORP Directive and under insurance law.

1 Notes

1. IAIS, Application Paper on the Supervision of Captive Insurers (2015), and the Insurance Core Principles (ICPs) as revised in 2019 and later; on the IAIS in general, see Part F, chapter IV of this book. To be verified. ↩
2. On the restructuring and resolution regime for insurers under the revised ISA (Arts. 51a ff. ISA, in force since 1 January 2024), see Chapter II of this Part and the FINMA Insurance Restructuring Ordinance. Status to be verified. ↩
3. On the reinsurance of pension fund risks under Art. 67 BVG and the Ordinance on Occupational Retirement, Survivors' and Disability Pension Plans (BVV 2, SR 831.441.1), and on the use of captives for employee benefits in multinational groups, see Chapter IV of this Part and the literature on employee benefit captives. To be verified. ↩

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